IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

W.A.No.1965 of 2005

AGAINST THE JUDGEMENT IN O.P.23640/1999 DATED 06/08/2004
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APPELLANTS: PETITIONERS:-
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1. M.T.MARY DEVASSY,
   ALAPPAT HOUSE, CHETTUPUZHA.P.O.

2. T.M.MARIAMMA,
   WIFE OF THE LATE SRI BABU,
   C/O.LEELA VIJAYAN, THEKKANATH HOUSE,
   P.O.ARIMBPPOOR (USHA STOP).

3. K.S.VASANTHI,
   WIFE OF THE LATE SRI.PREMKUMAR,
   KADAMPUZHA HOUSE, P.O.VALLACHIRA, URAKAM.

4. V.N.RADHA,
   VILAKKATHARA HOUSE,
   P.O.CHERUPUZHA.

5. OMANA XAVIER,
   IRUMBANA HOUSE, P.O.AYYANTHOLE.

6. K.R.LILLY,
   THANIKKAL HOUSE,
   KEERAMKULANGARA.P.O.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI
SMT.ANALAKHUSI BHASKAR

RESPONDENTS: PETITIONER AND RESPONDENTS 1 & 2:-
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1. THE MANAGING DIRECTOR,
   WEST FORT HOSPITAL,
   THRISSUR.

2. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY,
   GOVERNMENT OF KERALA, SECRETARIAT,
   THIRUVANANTHAPURAM.

3. THE INDUSTRIAL TRIBUNAL,
   PALAKKAD.

R1 BY ADV.SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU
R2 & R3 BY GOVERNMENT PLEADER SRI.T.B.HOOD.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07/12/2006, THE COURT ON 11/12/2006 DELIVERED THE FOLLOWING:-

V.K.Bali,C.J. & S.Siri Jagan,J.

W.A.No.1965 of 2005 & C.M.Appln.No.2212 of 2005

Dated, this the 11th day of December, 2006

JUDGMENT

V.K.Bali,C.J.

The challenge in the present Writ Appeal is to the order dated 6th August, 2004 passed by the learned Single Judge in O.P.No.23640 of 1999(L). Inasmuch as there is delay of 366 days in filing the appeal, the same is accompanied by an application seeking condonation of delay. Six workmen were affected of the impugned judgment passed by the learned Single Judge. Affidavit seeking condonation of delay has, however, been filed by Mary Devassy. It has, inter alia, been pleaded in the affidavit that the deponent was conducting the case of behalf of the other petitioners and she could not contact all the appellants duly and arrange to collect the certified copy of the judgment. She could go and collect the certified copy of the judgment only during December, 2004. She consulted her lawyer and she was advised to file the appeal challenging the judgment of the learned Single Judge. However, certain other documents relating to the case had to be collected by her for preparing the appeal. In the meantime, she misplaced the certified copy of the judgment

along with the entire file of the Original Petition. After thorough search, she could understand that the same was misplaced in the house of one of her relatives. After obtaining the same, she contacted all the other persons and it took some time for her to make necessary arrangements to file the appeal.

2. The averments made in the affidavit do not appear to be true at all. The judgment is dated 6th August, 2004. The certified copy of the same was collected by the deponent in December, 2004. As to when the deponent consulted the lawyer, when she lost the certified copy and the documents, when the same was traced out and in whose house the papers were traced are not mentioned in the affidavit. It is also not stated as to when the papers were traced out. As mentioned above, it is not a case of Mary Devassy alone, but others were also equally affected, who too have joined in filing the present appeal. Thus, it is not possible to believe that the other persons would have waited for such a long time until they were contacted by Mary Devassy. The contents of the affidavit do not appear to be true and also do not constitute sufficient cause. No occasion, thus, arises to condone the massive delay of 366 days.

3. There does not appear to be any merit in the appeal as well. The award of the Labour Court dated 8th March, 1999 appears to have been rightly interfered by the learned Single Judge. It was not a case of direct contract, but an agreement with an association and even in the agreement the period of contract was 11 months. It was not renewed. In such circumstances, the workmen could not be said to be employees of the management. We, however, do not go into further details of the case on merits as the appeal, in any case, would not survive if the application for condonation of delay is dismissed.

For the reasons mentioned above, we dismiss the application seeking condonation of delay. Writ Appeal does not survive.

V.K.Bali
Chief Justice

S.Siri Jagan
Judge

vku/-